

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

CARMEN D. BURGOS-YANTÍN, et al.,

Plaintiffs

v.

CIVIL 07-1146 (JA)

MUNICIPALITY OF JUANA DÍAZ, et  
al.,

Defendants

OPINION AND ORDER

This matter is before the court on the co-defendants Miguel Torres-Santiago and Gary Conde-González' unopposed motion for reconsideration filed on October 8, 2010 of the court's September 10, 2010 opinion and order (Docket No. 319) denying their motion for judgment as a matter of law. (Docket No. 322.) For the reasons set forth below, the motion is DENIED.

I. OVERVIEW

This is a case brought under the Civil Rights Act of 1971, 42 U.S.C. § 1983, and includes supplement claims under Article 1802 of the Puerto Rico Civil Code, P.R. Laws Ann. tit. 31, § 514. (Docket No. 84, at 3, ¶ 2; at 14, ¶ 34.) Plaintiffs allege that the civil rights of Miguel Ángel Burgos were violated by officers of the Police of Puerto Rico and the Municipality of Juana Díaz when they used or allowed the use of excessive force leading to his shooting and death. (Docket No. 84, at

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3 2 & 3.) A tort claim by several family members of the deceased was also included  
4 in the complaint. (Id. at 13.)

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6 The jury returned a verdict dismissing the Civil Rights Act claims but  
7 rendering a verdict on the supplemental negligence claims in favor of one of the  
8 nine plaintiffs, Carmen Burgos-Yantín, mother of the deceased. (Dockets No.  
9 300.) On July 29, 2010, the co-defendants moved for judgment as a matter of  
10 law under Federal Rule of Civil Procedure 50(b)(1)(C), seeking that the court  
11 vacate the jury's verdict. (Docket No. 310.) The co-defendants' motion for  
12 judgment as a matter of law was denied on September 10, 2010. Burgos-Yantín  
13 v. Municipality of Juana Díaz, \_\_\_\_ F. Supp. 2d \_\_\_\_, 2010 WL 3541106 (D.P.R.  
14 Sept. 10, 2010). Understanding that Carmen Burgos-Yantín, the mother of the  
15 deceased, suffered no actual injury caused by the defendants' fault or negligence,  
16 and further understanding that the court committed manifest error of law, co-  
17 defendants filed a motion of reconsideration before this court.

## 18 II. DISCUSSION

### 19 A. Motion for Reconsideration

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21 A motion for reconsideration may be considered as a motion under Federal  
22 Rule of Civil Procedure 59(e). See Rosario-Méndez v. Hewlett Packard Caribe, 660  
23 F. Supp. 2d 229, 232 (D.P.R. 2009.) "Rule 59(e) allows a party to direct the  
24 district court's attention to newly discovered material evidence or a manifest error  
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3 of law or fact . . . . ” Cruz-Claudio v. García Trucking Serv., Inc., 639 F. Supp. 2d  
4 213, 215 (D.P.R. 2009) (quoting DiMarco-Zappa v. Cabanillas, 238 F.3d 25, 34  
5 (1st Cir. 2001)); Meléndez v. Autogermana, Inc., 606 F. Supp. 2d 189, 199  
6 (D.P.R. 2009), aff’d, 622 F.3d 46 (1st Cir. 2010).  
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8 In their motion for reconsideration, co-defendants object to my relying on  
9 Landol-Rivera v. Cruz Cosme, 906 F.2d 791, 797 (1st Cir. 1990), in denying their  
10 motion for judgment as a matter of law. They argue further that the Landol-  
11 Rivera determination is completely distinguishable and inapposite from the fact  
12 of this case and should not have been considered by this court.  
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14 Although both the federal and state claims are based upon the same  
15 conduct in the present case, proof of each claim has different requirements. The  
16 reference to Landol-Rivera should have included parentheses distinguishing claims  
17 resulting from a constitutional tort and a negligence action. In Landol-Rivera, the  
18 court explained that at best Landol-Rivera could argue that the officer acted  
19 negligently in firing but that negligence is insufficient to establish a due process  
20 violation. Id. at 797. No other comparison between Landol-Rivera-Rivera and this  
21 case was intended.  
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24 B. Article 1802 of the Puerto Rico Civil Code

25 “Article 1802 is Puerto Rico’s basic tort statute.” Ocasio v. Hogar Geobel,  
26 Inc., 693 F. Supp. 2d 167, 176 (D.P.R. 2008) (quoting Matos-Ortiz v. Puerto Rico,  
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3 103 F. Supp. 2d 59, 63 (D.P.R. 2000)). In relevant part, the statute provides that  
4 "[a] person who by an act or omission causes damage to another through fault or  
5 negligence shall be obliged to repair the damage so done." P.R. Laws Ann. tit. 31,  
6 § 5141.  
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8 In order to prevail in a tort claim under this provision, a plaintiff must  
9 establish three elements: "(1) evidence of physical or emotional injury, (2) a  
10 negligent or intentional act or omission (the breach of duty element), and (3) a  
11 sufficient causal nexus between the injury and defendant's act or omission (in  
12 other words, proximate cause)." Vázquez-Filippetti v. Banco Popular de P.R., 504  
13 F.3d 43, 49 (1st Cir. 2007) (citing Torres v. Kmart Corp., 233 F. Supp. 2d 273,  
14 277-78 (D.P.R. 2002)).  
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### 17 C. Jury's Verdict

18 The jury determined that co-defendants Torres-Santiago and Conde-  
19 González were negligent and that such negligence resulted in damages to Carmen  
20 Burgos-Yantín under Puerto Rico law. "[U]nder Puerto Rico caselaw those  
21 related to a deceased victim by blood ties or by love and affection are deemed to  
22 suffer moral damages." Rivera Concepción v. Pepsi Cola of P.R., 288 F. Supp. 2d  
23 167, 173 (D.P.R. 2003). The co-defendants emphasize in their motion for  
24 reconsideration that the jury also found that Miguel Burgos did not suffer pain  
25 caused by the fault or negligence of any of the defendants. Such a finding is  
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consistent with the trial testimony of Dr. Francisco Cortés Rodríguez, forensic pathologist, who described a gunshot wound irregular in shape, resulting from a bullet which entered on the left parietal area of the head of Miguel Burgos one-half inch from the top and seven inches from the anterior midline. The trajectory was from left to right, back to front, so that the bullet pierced the scalp, through the two layers of the skull, through the dura mater, a protective membrane, perforating the brain and fracturing the bony structures at the base of the skull in the right frontal area. The doctor determined that the cause of death was a severe cranial cerebral trauma due to bullet wound. Usually upon receiving such a wound, immediate unconsciousness would ensue. Nevertheless, Puerto Rico recognizes that individuals related by blood ties or by love and affection to the decedent may file an independent cause of action against the person causing the unlawful death of such a loved one. López-Nieves v. Marrero-Vergel, 939 F. Supp. 124, 126 (D.P.R. 1996) (citing Hernández v. Fournier, 80 D.P.R. 93, 98 (1957)); cf. Montalvo v. González-Amparo, 587 F.3d 43, 47 (1st Cir. 2009); LaForest v. Autoridad de Las Fuentes Fluviales de P.R., 536 F.2d 443, 444-45 (1st Cir. 1976.); Torres Ríos v. Pereira Castillo, 545 F. Supp. 2d 204, 206 (D.P.R. 2007). Therefore there was no manifest error of law in the determination of the jury under Puerto Rico tort law that the negligent conduct of officers Miguel Torres-

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3 Santiago and Gary Conde-González caused Carmen Burgos-Yantín to suffer  
4 damages.  
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6 In view of the above, the defendant's motion for reconsideration is hereby  
7 DENIED.

8 It San Juan, Puerto Rico, this 18th day of November, 2010.  
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10 S/ JUSTO ARENAS  
11 Chief United States Magistrate Judge  
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